

Bureau of Industry and Security, Commerce

§ 736.1

then the foreign-made item is not subject to the EAR.

(b) *One-time report.* As stated in paragraphs (c) and (d) of § 734.4, a one-time report is required before reliance on the *de minimis* rules for technology. The purpose of the report is solely to permit the U.S. Government to evaluate whether U.S. content calculations were performed correctly.

(1) *Contents of report.* You must include in your report a description of the scope and nature of the foreign technology that is the subject of the report and a description of its fair market value, along with the rationale and basis for the valuation of such foreign technology. Your report must indicate the country of destination for the foreign technology reexports when the U.S.-origin controlled content exceeds 10%, so that BIS can evaluate whether the U.S.-origin controlled content was correctly identified based on paragraph (a)(1) of this Supplement. The report does not require information regarding the end-use or end-users of the reexported foreign technology. You must include in your report the name, title, address, telephone number, E-mail address, and facsimile number of the person BIS may contact concerning your report.

(2) *Submission of report.* You must submit your report to BIS using one of the following methods:

- (i) E-mail: rp2@bis.doc.gov;
- (ii) Fax: (202) 482-3355; or
- (iii) Mail or Hand Delivery/Courier: Regulatory Policy Division, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th and Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

(3) *Report and wait.* If you have not been contacted by BIS concerning your report within thirty days after filing the report with BIS, you may rely upon the calculations described in the report unless and until BIS contacts you and instructs you otherwise. BIS may contact you with questions concerning your report or to indicate that BIS does not accept the assumptions or rationale for your calculations. If you receive such a contact or communication from BIS within thirty days after filing the report with BIS, you may not rely upon the calculations described in the report, and may not use the *de minimis* rules for technology that are described in § 734.4 of this part, until BIS has indicated that such calculations were performed correctly.

[73 FR 56969, Oct. 1, 2008]

PART 736—GENERAL PROHIBITIONS

Sec.

736.1 Introduction.

736.2 General prohibitions and determination of applicability.

SUPPLEMENT NO. 1 TO PART 736—GENERAL ORDERS

SUPPLEMENT NO. 2 TO PART 736—ADMINISTRATIVE ORDERS

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 9, 2011, 76 FR 70319 (November 10, 2011); Notice of May 9, 2012, 77 FR 27559 (May 10, 2012); Notice of August 15, 2012, 77 FR 49699 (August 16, 2012).

SOURCE: 61 FR 12754, Mar. 25, 1996, unless otherwise noted.

§ 736.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. A person may undertake transactions subject to the EAR without a license or other authorization, unless the regulations affirmatively state such a requirement. As such, if an export, reexport, or activity is subject to the EAR, the general prohibitions contained in this part and the License Exceptions specified in part 740 of the EAR must be reviewed to determine if a license is necessary. In the case of all exports from the United States, you must document your export as described in part 762 of the EAR regarding recordkeeping and clear your export through the U.S. Customs Service as described in part 758 of the EAR regarding export clearance requirements. Also note that for short supply controls all prohibitions and License Exceptions are in part 754 of the EAR.

(a) In this part we tell you:

(1) The facts that make your proposed export, reexport, or conduct subject to these general prohibitions, and

(2) The ten general prohibitions.

(b) Your obligations under the ten general prohibitions and under the EAR depend in large part upon the five types of information described in § 736.2(a) of this part and upon the general prohibitions described in § 736.2(b) of this part. The ten general prohibitions contain cross-references to other parts of the EAR that further define the breadth of the general prohibitions.

For that reason, this part is not free-standing. In part 732, we provide certain steps you may follow in proper order to help you understand the general prohibitions and their relationship to other parts of the EAR.

(c) If you violate any of these ten general prohibitions, or engage in other conduct contrary to the Export Administration Act, the EAR, or any order, license, License Exception, or authorization issued thereunder, as described in part 764 of the EAR regarding enforcement, you will be subject to the sanctions described in that part.

§ 736.2 General prohibitions and determination of applicability.

(a) *Information or facts that determine the applicability of the general prohibitions.* The following five types of facts determine your obligations under the ten general prohibitions and the EAR generally:

(1) *Classification of the item.* The classification of the item on the Commerce Control List (see part 774 of the EAR);

(2) *Destination.* The country of ultimate destination for an export or reexport (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List);

(3) *End-user.* The ultimate end user (see General Prohibition Four (paragraph (b)(4) of this section) and Supplement No. 1 to part 764 of the EAR for references to persons with whom your transaction may not be permitted; see General Prohibition Five (Paragraph (b)(5) of this section) and part 744 for references to end-users for whom you may need an export or reexport license).

(4) *End-use.* The ultimate end-use (see General Prohibition Five (paragraph (b)(5) of this section) and part 744 of the EAR for general end-use restrictions); and

(5) *Conduct.* Conduct such as contracting, financing, and freight forwarding in support of a proliferation project as described in part 744 of the EAR.

(b) *General prohibitions.* The following ten general prohibitions describe certain exports, reexports, and other conduct, subject to the scope of the EAR, in which you may not engage unless you either have a license from the Bu-

reau of Industry and Security (BIS) or qualify under part 740 of the EAR for a License Exception from each applicable general prohibition in this paragraph. The License Exceptions at part 740 of the EAR apply only to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports); however, selected License Exceptions are specifically referenced and authorized in part 746 of the EAR concerning embargo destinations and in § 744.2(c) of the EAR regarding nuclear end-uses.

(1) *General Prohibition One—Export and reexport of controlled items to listed countries (Exports and Reexports).* You may not, without a license or License Exception, export any item subject to the EAR to another country or reexport any item of U.S.-origin if each of the following is true:

(i) The item is controlled for a reason indicated in the applicable Export Control Classification Number (ECCN), and

(ii) Export to the country of destination requires a license for the control reason as indicated on the Country Chart at part 738 of the EAR. (The scope of this prohibition is determined by the correct classification of your item and the ultimate destination as that combination is reflected on the Country Chart.)¹ Note that each License Exception described at part 740 of the EAR supersedes General Prohibition One if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(2) *General Prohibition Two—Reexport and export from abroad of foreign-made items incorporating more than a de minimis amount of controlled U.S. content (U.S. Content Reexports).* (i) You may not, without a license or license exception, reexport or export from abroad foreign-made commodities that incorporate controlled U.S.-origin commodities, foreign-made commodities that are “bundled” with controlled U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, or foreign-made

¹See part 738 of the EAR for selected controls that are not specified on the Country Chart.